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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

9
10 UNITED STATES DISTRICT COURT
11 EASTERN DISTRICT OF WASHINGTON

NOV 02 2010

JAMES R. LARSEN, CLERK
DEPUTY
CLERK, WASHINGTON

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 vs.

15 ANITA M. GUST,

16 Defendant.

10-CR-06026-RHW-2

Plea Agreement

17 Plaintiff, United States of America, by and through Michael C. Ormsby,
18 United States Attorney for the Eastern District of Washington, and K. Jill Bolton,
19 Assistant United States Attorney for the Eastern District of Washington, and
20 Defendant ANITA M. GUST and the Defendant's counsel, Salvador Mendoza, Jr.,
21 agree to the following Plea Agreement:

22 1. Guilty Plea and Maximum Statutory Penalties:

23 The Defendant, ANITA M. GUST, agrees to plead guilty to Counts 2 and 3
24 of the Indictment filed on March 24, 2010, charging the Defendant with Wire
25 Fraud, in violation of 18 U.S.C. §§ 1343 and 2.

26 The Defendant, ANITA M. GUST, understands that the charges contained
27 in the Indictment are Class C felony charges. The Defendant, ANITA M. GUST,
28 also understands that the maximum statutory penalty for Wire Fraud, in violation
of 18 U.S.C. §§ 1343 and 2, is not more than 20 years imprisonment; a fine not to

1 exceed \$250,000; a term of supervised release of not more than 3 years; restitution
2 and a \$100 special penalty assessment.

3 The Defendant, ANITA M. GUST, understands that a violation of a
4 condition of supervised release carries an additional penalty of re-imprisonment
5 for all or part of the term of supervised release without credit for time previously
6 served on post-release supervision.

7 2. The Court is Not a Party to the Agreement:

8 The Court is not a party to this Plea Agreement and may accept or reject this
9 Plea Agreement. Sentencing is a matter that is solely within the discretion of the
10 Court. The Defendant understands that the Court is under no obligation to accept
11 any recommendations made by the United States and/or by the Defendant; that the
12 Court will obtain an independent report and sentencing recommendation from the
13 U.S. Probation Office; and that the Court may, in its discretion, impose any
14 sentence it deems appropriate up to the statutory maximums stated in this Plea
15 Agreement.

16 The Defendant acknowledges that no promises of any type have been made
17 to the Defendant with respect to the sentence the Court will impose in this matter.
18 The Defendant understands that the Court is required to consider the applicable
19 sentencing guideline range, but may depart upward or downward under the
20 appropriate circumstances.

21 The Defendant also understands that should the sentencing judge decide not
22 to accept any of the parties' recommendations, that decision is not a basis for
23 withdrawing from this Plea Agreement or a basis for withdrawing this plea of
24 guilty.

25 3. Waiver of Constitutional Rights:

26 The Defendant, ANITA M. GUST, understands that by entering this plea of
27 guilty the Defendant is knowingly and voluntarily waiving certain constitutional
28 rights, including:

- 1 (a). The right to a jury trial;
- 2 (b). The right to see, hear and question the witnesses;
- 3 (c). The right to remain silent at trial;
- 4 (d). The right to testify at trial; and
- 5 (e). The right to compel witnesses to testify.

6 While the Defendant is waiving certain constitutional rights, the Defendant
7 understands the Defendant retains the right to be assisted through the sentencing
8 and any direct appeal of the conviction and sentence by an attorney, who will be
9 appointed at no cost if the Defendant cannot afford to hire an attorney. The
10 Defendant also acknowledges that any pretrial motions currently pending before
11 the Court are waived.

12 4. Elements of the Offense:

13 The United States and the Defendant agree that in order to convict the
14 Defendant of Wire Fraud, in violation of 18 U.S.C. §§ 1343 and 2, the United
15 States would have to prove beyond a reasonable doubt the following elements:

- 16 (a). First, on or about September 1, 2000 and continuing until on or
17 about September 30, 2005, in the Eastern District of
18 Washington, the Defendant, ANITA M. GUST, devised and
19 participated in a scheme to defraud; and
- 20 (b). Second, the wires were used to further the scheme.

21 5. Factual Basis and Statement of Facts:

22 The United States and the Defendant stipulate and agree that the following
23 facts are accurate; that the United States could prove these facts beyond a
24 reasonable doubt at trial; and these facts constitute an adequate factual basis for
25 ANITA M. GUST's guilty plea. This statement of facts does not preclude either
26 party from presenting and arguing, for sentencing purposes, additional facts which
27 are relevant to the guideline computation or sentencing, unless otherwise
28 prohibited in this agreement.

1 Paul Kempf worked as a Laboratory Operations Manager for two of the U.S.
2 Department of Energy's (DOE's) Prime Contractors from approximately
3 2000-2005. Kempf was also a DOE government purchase card (P-Card) holder.
4 Kempf's position permitted him to purchase supplies for the laboratory he
5 managed. ANITA GUST was Kempf's wife or ex-wife during the time period
6 relevant to the charges and was the registered owner of AMG Marketing. AMG
7 Marketing was a home-based business that operated out of Kempf and GUST'S
8 jointly owned and occupied residence. AMG Marketing functioned as an
9 intermediary "middle man" type business that did not manufacture any products or
10 have any inventory, but rather took purchase orders, then found the inventory to
11 meet the orders.

12 From 2000-2005, Kempf used his DOE government funded P-Card to place
13 over \$487,000 in orders for "ghost" purchases for laboratory supplies from AMG
14 Marketing. The investigation conducted by the Department of Energy (DOE)
15 Office of Inspector General (OIG) determined that DOE never received the
16 laboratory supplies and that instead, Kempf and GUST converted the DOE funds
17 for their own personal use. Some examples of how Kempf and GUST spent the
18 \$487,000 include: 1) \$50,000 renovating a 1966 Chevy Nova; 2) \$63,000 on
19 auto/boat related expenses; 3) \$105,000 in personal checks made out to Gust; and,
20 4) \$17,000 on home improvements.

21 The investigation also determined that Kempf and GUST provided altered
22 checks and fictitious business invoices in response to a Grand Jury Subpoena that
23 was issued to AMG Marketing for records related to the investigation.

24 When Kempf was interviewed by DOE -OIG Agents, he initially denied
25 even knowing ANITA GUST. Later in the interview, Kempf admitted they were
26 married and living together and that GUST owned and operated AMG Marketing
27 out of their residence. Kempf, however, never admitted misusing his DOE funded
28 P-Card. When GUST was interviewed by DOE-OIG Agents, she stated she was

1 divorced from Kempf and that they didn't reside together. GUST acknowledged,
2 however, that Kempf had made P-Card purchases from her at AMG Marketing.
3 GUST eventually admitted Kempf resided with her and she knew he shouldn't be
4 making any P-Card purchases through AMG Marketing.

5 Forensic review of bank records and other subpoenaed documents
6 established that the wires were used to perpetrate the scheme to defraud by
7 transferring funds electronically from Paul Kempf's government P-Card to the
8 AMG Marketing accounts.

9 The Defendant asserts that the criminal activity jointly undertaken by
10 herself and her husband, Paul Kempf, was undertaken at the direction and urging
11 of Paul Kempf, that Paul Kempf was the leader, organizer and manager of the
12 criminal activity and that she was a minimal participant in the criminal activity.

13 6. Cooperation:

14 The Defendant agrees to cooperate completely and truthfully with the
15 United States as follows:

16 (a.) Debriefings:

17 The Defendant agrees to participate in full debriefings by federal and local
18 investigative agencies about all the Defendant's knowledge of illegal conduct, at
19 times and places to be decided by these agencies. The Defendant agrees to provide
20 complete, accurate and truthful information to these agencies. The Defendant
21 agrees to not falsely implicate any person or entity and agrees to not protect any
22 person or entity through false information or omission.

23 It is understood that the Defendant may have an attorney present at any or
24 all such debriefings.

25 (b.) Testimony:

26 The Defendant agrees to testify completely and truthfully at any subsequent
27 hearing, grand jury proceeding, or other federal or state court proceeding
28 involving co-defendants or any other person involved in criminal activity.

1 Both the Defendant and the United States agree to request a reasonable
2 continuance of the sentencing date in order to ensure that the Defendant testifies
3 pursuant to this provision prior to sentencing.

4 (c.) Documents:

5 The Defendant agrees to voluntarily produce all documents, records, or
6 other tangible evidence relating to matters about which the United States
7 Attorney's Office or law enforcement agencies inquire.

8 (d.) Recovery of Assets:

9 The Defendant agrees to fully cooperate in the identification and recovery
10 of assets to pay restitution and further agrees that if any proceeds are in the
11 Defendant's possession or control, the Defendant will immediately relinquish
12 them to the United States.

13 (e.) Polygraph:

14 The Defendant agrees, if requested, to submit to one or more polygraph
15 examinations at the United States' expense, to determine the truthfulness of the
16 Defendant's statements and answers to questions with regard to the Defendant's
17 cooperation herein. Any disputes as to whether the Defendant provided truthful
18 responses to any polygraph testing will be resolved by the sentencing judge.

19 (f.) Income Tax Information:

20 The Defendant agrees to participate in preparing a statement with the IRS,
21 United States Attorney's Office or any other law enforcement agency setting forth
22 the Defendant's income from wire fraud. The Defendant further agrees to report
23 said income on the Defendant's tax return or an amended tax return.

24 (g.) Notification:

25 The Defendant agrees to immediately notify the United States Attorney's
26 Office if the Defendant is contacted, interviewed, subpoenaed or requested to
27 testify for or against any other person.
28

1 (h.) Not a Substantial Assistance Agreement:

2 The Defendant understands that this agreement to cooperate with the United
3 States is **not** a substantial assistance agreement, pursuant to U.S.S.G. §5K1.1 or 18
4 U.S.C. § 3553(e); thus, the United States will not be filing any motion for a
5 departure from the Guidelines or sentencing statute.

6 (i.) Effect of Breach:

7 The Defendant agrees that if the Defendant breaches this Plea Agreement,
8 the agreement is null and void and the Defendant expressly waives the right to
9 challenge the initiation of additional charges against the Defendant for any
10 criminal activity and agrees that the United States may make derivative use of and
11 may pursue any investigative leads suggested by the Defendant's statements and
12 cooperation.

13 This agreement does not protect the Defendant from prosecution for perjury,
14 obstruction of justice, or any other offense should the Defendant commit any
15 crime during the Defendant's cooperation under this agreement.

16 7. Waiver of Inadmissibility of Statements:

17 The Defendant agrees to waive the inadmissibility of statements made in the
18 course of plea discussions with the United States, pursuant to Fed. R. Crim.
19 P. 11(f). This waiver shall apply if the Defendant withdraws this guilty plea or
20 breaches this Plea Agreement. The Defendant acknowledges that any statements
21 made by the Defendant to law enforcement agents in the course of plea discussions
22 in this case would be admissible against the Defendant in the United States's case-
23 in-chief if the Defendant were to withdraw or breach this Plea Agreement.

24 8. The United States Agrees:

25 (a.) Dismissal(s):

26 At the time of sentencing, the United States agrees to move to dismiss
27 Count 1 of the Indictment, which charges the Defendant with Conspiracy to
28 Commit Wire Fraud, in violation of 18 U.S.C. §§ 371, 1343 and 2 and Counts 4

1 through 7 of the Indictment which charge the Defendant with Wire Fraud, in
2 violation of 18 U.S.C. §§ 1343 and 2.

3 (b.) Not to File Additional Charges:

4 The United States Attorney's Office for the Eastern District of Washington
5 agrees not to bring any additional charges against the Defendant based upon
6 information in its possession at the time of this Plea Agreement and arising out of
7 Defendant's conduct involving illegal activity charged in this Indictment, unless
8 the Defendant breaches this Plea Agreement any time before or after sentencing.

9 9. United States Sentencing Guideline Calculations:

10 The Defendant understands and acknowledges that the United States
11 Sentencing Guidelines (hereinafter "U.S.S.G.") are applicable to this case and that
12 the Court will determine the Defendant's applicable sentencing guideline range at
13 the time of sentencing.

14 (a.) Base Offense Level:

15 The United States and the Defendant agree that the base offense level for
16 Wire Fraud is 7. See U.S.S.G. §2B1.1.

17 The United States and the Defendant agree and stipulate that \$487,000.00
18 was the fraud loss caused and incurred in furtherance of the criminal activity
19 jointly undertaken by the Defendant and her co-defendant/co-conspirator, Paul
20 Kempf; this amount was within the scope of the Defendant's agreement and
21 scheme to defraud; this amount was reasonably foreseeable to the Defendant in
22 connection with the conspiracy; and the Defendant's relevant conduct for
23 sentencing purposes should be calculated based upon this amount, pursuant to
24 U.S.S.G. §1B1.3.

25 (b.) Specific Offense Characteristics:

26 The United States and the Defendant also agree and stipulate that the base
27 offense is increased by an additional 14 levels because the amount of loss was
28 more than \$400,000.00. See U.S.S.G. 2B1.1(b)(1)(H).

1 The United States and the Defendant also agree and stipulate that the base
2 offense level should also be increased by an additional 2 levels because the
3 Defendant attempted to obstruct or impede the investigation of her criminal
4 activity by providing altered checks and fictitious business invoices in response to
5 a Grand Jury Subpoena that was issued to AMG Marketing for records related to
6 the investigation. See U.S.S.G. 3C1.1.

7 The United States and the Defendant also agree and stipulate that the base
8 offense level should be decreased by 4 levels because the Defendant was a
9 minimal participant in the criminal activity. See U.S.S.G. 3B1.2(a).

10 (c.) Acceptance of Responsibility:

11 Notwithstanding the parties agreement that the obstruction of justice
12 enhancement applies in this case, if the Defendant pleads guilty and demonstrates
13 a recognition and an affirmative acceptance of personal responsibility for the
14 criminal conduct; provides complete and accurate information during the
15 sentencing process; does not commit any obstructive conduct during the plea and
16 sentencing process; accepts this Plea Agreement; and enters a plea of guilty no
17 later than November 2, 2010, the United States will move for a three (3) level
18 downward adjustment in the offense level for the Defendant's timely acceptance
19 of responsibility, pursuant to U.S.S.G. §3E1.1(a) and (b). The parties agree that
20 extraordinary circumstances exist in this case including, but not limited to, the
21 Defendant's cooperation pursuant to the terms of this agreement and the
22 importance of that cooperation in preventing future loss by fraud to the
23 Department of Energy.

24 The Defendant and the United States agree that the United States may at its
25 option and upon written notice to the Defendant, not recommend a three (3) level
26 downward reduction for acceptance of responsibility if, prior to the imposition of
27 sentence, the Defendant is charged or convicted of any criminal offense
28 whatsoever or if the Defendant tests positive for any controlled substance.

1 Furthermore, the Defendant agrees to pay the \$200 mandatory special
2 penalty assessment to the Clerk of Court for the Eastern District of Washington, at
3 or before sentencing, and shall provide a receipt from the Clerk to the United
4 States before sentencing as proof of this payment, as a condition to this
5 recommendation by the United States.

6 Therefore, the United States and the Defendant agree that the Defendant's
7 final adjusted offense level would be 16.

8 (d.) Criminal History:

9 The United States and the Defendant understand that the Defendant's
10 criminal history computation is tentative and that ultimately the Defendant's
11 criminal history category will be determined by the Court after review of the
12 Presentence Investigative Report. The United States and the Defendant have made
13 no agreement and make no representations as to the criminal history category,
14 which shall be determined after the Presentence Investigative Report is completed.

15 10. Departures:

16 The Defendant intends to request a variance from the applicable sentencing
17 guidelines range. At this time, the Defendant is unable to articulate the basis for
18 this variance request. The United States reserves its right to oppose any requested
19 variance.

20 11. Incarceration:

21 (a.) Length of Imprisonment:

22 The United States agrees to recommend that the Court impose a sentence at
23 the low end the applicable sentencing guideline range. The Defendant intends to
24 seek a variance from the sentencing guideline range.

25 (b.) Manner of Imprisonment:

26 The United States agrees that it will not oppose the Defendant's request that
27 her sentence be consecutive to that of her co-defendant, Paul Kempf, so that one of
28

1 them will remain available to care for their minor child while the other is serving
2 his/her term of imprisonment.

3 12. Criminal Fine:

4 The United States and the Defendant are free to make whatever
5 recommendation concerning the imposition of a criminal fine that they believe is
6 appropriate.

7 13. Supervised Release:

8 The United States and the Defendant agree to recommend that the Court
9 impose a 3 year term of supervised release to include the following special
10 conditions, in addition to the standard conditions of supervised release:

11 (a). that the Defendant provide financial information, provide copies of
12 Federal income tax returns and allow credit checks, at the direction of the
13 Probation Officer;

14 (b). that the Defendant shall disclose all assets and liabilities to the
15 Probation Officer and shall not transfer, sell, give away, or otherwise convey or
16 secret any asset, without the advance approval of the Probation Officer; and

17 (c). that the Defendant be prohibited from incurring any new debt, opening
18 new lines of credit, or enter any financial contracts or obligations without the prior
19 approval of the Probation Officer;

20 (d). that the Defendant participate and complete financial counseling and
21 life skills programs at the direction of the Probation Officer;

22 14. Restitution:

23 The Defendant hereby stipulates and agrees to an order of restitution in the
24 amount of \$487,000, with monthly installments payments to begin as soon as the
25 Defendant is financially capable, as determined by the United States Probation
26 Office and this Court, jointly and severally with co-defendant Paul Kempf. The
27 parties agree to recommend to the Court that interest be waived on this amount
28

1 provided that the Defendant makes monthly payments according to her financial
2 ability as determined by the United States Probation Office and this Court.

3 15. Mandatory Special Penalty Assessment:

4 The Defendant agrees to pay the \$200 mandatory special penalty assessment
5 to the Clerk of Court for the Eastern District of Washington, at or before
6 sentencing, pursuant to 18 U.S.C. § 3013 and shall provide a receipt from the
7 Clerk to the United States before sentencing as proof of this payment.

8 16. Payments While Incarcerated:

9 If the Defendant lacks the financial resources to pay the monetary
10 obligations imposed by the Court, the Defendant agrees to earn the money to pay
11 toward these obligations by participating in the Bureau of Prisons' Inmate
12 Financial Responsibility Program.

13 17. Additional Violations of Law Can Void Plea Agreement:

14 The Defendant and the United States agree that the United States may at its
15 option and upon written notice to the Defendant, withdraw from this Plea
16 Agreement or modify its recommendation for sentence if, prior to the imposition
17 of sentence, the Defendant is charged or convicted of any criminal offense
18 whatsoever or if the Defendant tests positive for any controlled substance.

19 18. Limited Appeal Rights:

20 In return for the concessions that the United States has made in this Plea
21 Agreement, the Defendant agrees to waive the right to appeal the sentence if the
22 Court imposes a prison term of no longer than 21 months, imposes a term of
23 supervised release of no longer than 3 years, waives the imposition of a fine, and
24 imposes a \$200 penalty assessment. Should the Defendant successfully move to
25 withdraw from this Plea Agreement or should the Defendant's conviction on
26 Counts 2 and 3 of the Indictment be dismissed, set aside, vacated, or reversed, this
27 Plea Agreement shall become null and void; the United States may move to
28 reinstate all counts of Indictment No. 10-CR-06026-RHW-2; and the United States

1 may prosecute the Defendant on all available charges involving or arising from the
2 Conspiracy to Commit Wire Fraud and Wire Fraud charges set forth in the
3 Indictment. Nothing in this Plea Agreement shall preclude the United States from
4 opposing any post-conviction motion for a reduction of sentence or other attack of
5 the conviction or sentence, including, but not limited to, proceedings pursuant to
6 28 U.S.C. § 2255 (writ of habeas corpus).

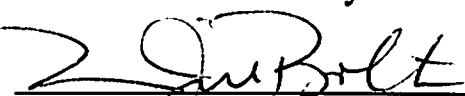
7 19. Integration Clause:

8 The United States and the Defendant acknowledge that this document
9 constitutes the entire Plea Agreement between the United States and the
10 Defendant, and no other promises, agreements, or conditions exist between the
11 United States and the Defendant concerning the resolution of the case. This Plea
12 Agreement is binding only upon the United States Attorney's Office for the
13 Eastern District of Washington, and cannot bind other federal, state or local
14 authorities. The United States and the Defendant agree that this agreement cannot
15 be modified except in a writing that is signed by the United States and the
16 Defendant.

17 Approvals and Signatures

18 Agreed and submitted on behalf of the United States Attorney's Office for
19 the Eastern District of Washington.

20 Michael C. Ormsby
21 United States Attorney

22 
23 K. Jill Bolton
24 Assistant U.S. Attorney

11/2/10
Date

25 I have read this Plea Agreement and have carefully reviewed and discussed
26 every part of the agreement with my attorney. I understand and voluntarily enter
27 into this Plea Agreement. Furthermore, I have consulted with my attorney about
28 my rights, I understand those rights, and I am satisfied with the representation of

1 my attorney in this case. No other promises or inducements have been made to
2 me, other than those contained in this Plea Agreement and no one has threatened
3 or forced me in any way to enter into this Plea Agreement. I am agreeing to plead
4 guilty because I am guilty.

5
6 
7 ANITA M. GUST
Defendant

11-2-10
Date

8
9 I have read the Plea Agreement and have discussed the contents of the
10 agreement with my client. The Plea Agreement accurately and completely sets
11 forth the entirety of the agreement between the parties. I concur in my client's
12 decision to plead guilty as set forth in the Plea Agreement. There is no legal
13 reason why the Court should not accept the Defendant's plea of guilty.

14 
15 Salvador Mendoza, Jr.
16 Attorney for the Defendant

11-2-10
Date